

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company

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Docket No. 13-0552

**Submission of Rider NAM, Non AMI
Metering (tariffs filed September 20,
2013).**

REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

MATTHEW L. HARVEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
mharvey@icc.illinois.gov

December 19, 2013

*Counsel for the Staff of the
Illinois Commerce Commission*

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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to the direction of the Administrative Law Judges (“ALJ”) and Section 200.800 of the Illinois Administrative Code (83 Ill. Adm. Code 200.800), respectfully submits its reply brief in the above-captioned matter.

I. REPLY TO THE COMMONWEALTH EDISON COMPANY

A. Meter Reading Charge

The Commonwealth Edison Company (ComEd) proposes a monthly meter-reading charge of \$25. *See, generally* ComEd IB, 7, *et seq.* Staff, in contrast, states that the Commission could, in its discretion, authorize any of several charges falling within a specified range. *See, generally*, Staff IB, 6, *et seq.* Specifically, if the Commission views the public interest to require a cost-based charge, the Staff recommends the Non-Standard Switching Fee of \$43.04 as the best proxy for such a charge, this being the Commission approved rate ComEd charges for off-cycle meter reading. Staff IB, 7.

ComEd describes this rate as “reasonable” insofar as it falls within the range of cost-base rates identified by its witness David Doherty. ComEd IB, 9. However, ComEd states that it is impossible to establish a purely cost-based rate for this service, primarily because refusal rates, which drive the cost, are unknown at present. Id.

This, while true, is less of a concern than ComEd makes it out to be. It is certainly the case that future actions of customers cannot be predicted with 100% accuracy. However, in the event the Commission is inclined to consider a cost-based rate as best serving the public interest, Staff’s proposal is as close to cost-based as any proposal before the Commission, and close to cost-based as can be determined based on existing data. Further, as ComEd will file biannual reports regarding, among other things, refusal levels, Staff IB, 10, it will be possible to revisit and refine the rate over time. Accordingly, Staff’s proposal cannot be discounted for the reasons cited by ComEd.

If the Commission is inclined to base a refusal rate more heavily upon public policy than upon cost, then a relatively low rate – in the \$10-20 range – will likely satisfy this objective. Staff IB, 9. This is based on Staff’s review of refusal rates experienced by a number of other utilities. Staff IB, 9. Staff’s review revealed that certain utilities charging refusal rates of between \$10 and \$20 experienced refusal rates between 0.08% and 0.29%. Id.

ComEd attempts to convince the Commission that the experience of a relatively small municipal utility, Naperville, should be considered to be the best predictor of what ComEd’s refusal rate will be. ComEd IB, 9. As noted, however, Staff has, in recommending a rate in the \$10 to \$20 range, considered the experience of a number

of utilities. Staff IB, 9. ComEd makes no case for Naperville being more representative of ComEd's customer base than that of San Diego Gas and Electric, where a \$10 charge resulted in a 0.08% refusal rate. *Id.*

Further, as Staff has previously noted, the Commission is in a position to fine-tune the refusal charge in the event that the rate does not yield the desired result; the biannual reporting requirement will enable the Commission to accomplish this.

Staff's proposal for a rate that combines policy and cost considerations is \$21.53. Staff IB, 10. ComEd does not criticize this proposal specifically; it merely reiterates its support for its own \$25 rate. ComEd IB, 6-9.

B. Proposal to Replace Existing Non-AMI Meters with Digital Non-AMI Meters

ComEd's Initial Brief identifies this issue as contested, ComEd IB at 4; however, Staff views the issue as resolved and no longer a contested issue, and accordingly lists this issue as Uncontested in its Initial and Reply Briefs. Staff IB at 11. In light of the apparent disconnect between Staff's perception of the status of the issue and ComEd's, Staff believes a certain amount of further discussion is warranted, in the event that ComEd and Staff have not reached a meeting of the minds.

ComEd initially proposed to replace refusing customers' analog non-AMI meters with digital meters. ComEd Ex. 2.0, 13-14. ComEd cited four reasons for replacing what in many cases would be meters that are in good working order. *Id.* Staff thoroughly rebutted each of the four reasons. Staff Ex. 3.0, 5-7. In its rebuttal testimony, ComEd did not reiterate its initial reasons, but offered a new reason regarding efficiency and economics: it would be less expensive to replace a working meter while on-site during

AMI deployment, noting that the existing meter “could slow down over time or ... would be more likely to require a future field trip”. ComEd Ex. 4.0, 3.

No support is offered for such speculation. See, generally, ComEd Ex. 4.0. Clearly, ComEd expects that many long-lived analog non-AMI meters will continue to operate as intended throughout the AMI deployment program. In fact, over 1.5 million analog non-AMI meters will not be visited as part of the AMI deployment until the final four years of the AMI project, or from 2018-2021. Staff Ex. 3.0, 5-6.

In rebuttal, ComEd’s alternative plan is to follow its current meter replacement policy including a visual inspection of the meter location and “in cases where the electro-mechanical meter is functioning properly and would not otherwise be replaced by ComEd’s existing practice and policy, ComEd would complete the inspection and leave the existing meter in place.” ComEd Ex 4.0, 5. The Company’s proposal is satisfactory and should be adopted as part of the meter refusal policy with one exception: the Company provided no evidence to explain how the on-site visual inspection will detect a slow meter, suggesting inspectors may have too much latitude in identifying a slow meter. See, generally, ComEd Ex. 4.0. Staff continues to recommend that the Commission remind the Company to be prudent in its inspection and replacement of refusal customers’ meters and only replace those that are not working or are damaged.

Given the Company’s agreement to follow its current meter replacement policy and make the related modifications to Rider NAM, Staff considers this meter exchange issue to be resolved. Staff also considers the Company’s earlier proposal regarding a

special ratemaking treatment to be inapplicable and moot. Indeed, the Company did not address the special ratemaking treatment in its Initial Brief.

II. REPLY TO THE CITIZENS UTILITY BOARD

The Citizens Utility Board (CUB) correctly supports the propositions that the Commission can and should establish a meter-refusal policy. CUB IB, 2, et seq. However, its proposal for a refusal policy is flawed. Specifically, CUB suggests that the Rider NAM tariff should not sunset in 2022, but rather remain in effect past 2022 without any sunset date. CUB IB, 6-7. This would have the effect of allowing some customers to refuse AMI meters indefinitely. The Commission should reject this recommendation as inconsistent with the statute.

Contrary to CUB's protestations, the statute is clear: an utility's AMI plan must be "implement[ed] ... across its entire service territory[.]" 220 ILCS 5/16-108.6(c) (emphasis added). Even more specifically, ComEd's AMI plan must include "a deployment schedule and plan that includes deployment of AMI to all [its] customers[.]" 220 ILCS 5/16-108.6(c)(3) (emphasis added). It is apparent from this that the General Assembly intended that all customers receive AMI meters by 2022.

CUB argues that existing Commission rules permit certification of alternative service meter providers, which, CUB suggests, argues against any construction of Section 16-108.6(c) that requires universal deployment of AMI meters. CUB IB, 4. This argument is infirm. First, the rule upon which CUB relies was promulgated in 2000, see 24 Ill. Reg. 19052 (rule effective December 15, 2000) and last amended in 2004. See 28 Ill. Reg. 10623 (rule amended effective August 1, 2004). The notion that such an administrative rule is an aid to construction of a statute enacted in 2011 is simply

untenable. Second, even were the rule an aid to construction, it is at best an extrinsic aid. If, as is the case here, the legislature's intent can be determined from the plain language of the statute, that intent must be given effect, without further resort to extrinsic aids to statutory construction. Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014 (1997). CUB's argument must therefore fail.

CUB further argues that AMI is broadly defined in the statute, but neglects to give any insights into what the statutory definition actually is. CUB IB at 4. Any review of the definition is fatal to CUB's position.

AMI is defined in the statute as:

[T]he communications hardware and software and associated system software that enables Smart Grid functions by creating a network between advanced meters and utility business systems and allowing collection and distribution of information to customers and other parties in addition to providing information to the utility itself.

220 ILCS 5/16-108.6(a) (emphasis added)

"Advanced meters" are therefore an absolute requirement of the provision that CUB would have the Commission define so broadly as to not require them in all cases. CUB's assertions thus cannot be credited.

CUB next argues that allowing customers to refuse AMI meters constitutes sound public policy. This may or may not be the case. However, it is not the policy that the Illinois General Assembly has determined will be implemented in Illinois. A statute must be construed as it is, and a court or agency may not supply omissions, remedy defects, or add exceptions and limitations to the statute's application, regardless of its opinion regarding the desirability of the results of the statute's operation. Toys "R" Us v.

Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328 (3rd Dist. 1991). Sound policy or not, CUB's argument must fail here as well.

Since the statute requires ubiquitous deployment of AMI meters, the Commission should likewise reject CUB's request that Rider NAM not sunset in 2022. See CUB IB, 6-7.

III. CONCLUSION

WHEREFORE, for each of the foregoing reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding Commonwealth Edison's proposed Rider NAM – Non AMI Metering and associated revised tariff sheets.

Respectfully submitted,

MATTHEW L. HARVEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
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